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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

EDWARD SMITH,

Plaintiff(s)

vs.

ANTHONY BRIGANO, Warden

Defendant(s)

Case Number: 1:01cv814-SJD

District Judge Susan J. Dlott

ORDER

This matter is before the Court for consideration of the plaintiff's Motions for Reconsideration (Doc. 27, 28, 29 and 30). Plaintiff seeks a reconsideration of the conclusions reached by this Court in its Order of September 2, 2004 adopting the report and recommendations.

The Court has carefully reviewed the plaintiff's motions and the authorities cited therein. As noted in *Virgin Atlantic Airways, Ltd. v. National Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir. 1992) quoting 18 C. Wright, A. Miller, E. Cooper, Federal Practice and Procedure Sec 4478 at 790, "[t]he major grounds for justifying reconsideration are 'an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.'" In this case, there is no intervening change of controlling law. The plaintiff has submitted no new evidence. The Court is not aware of any need to correct a clear error or to prevent manifest injustice. Instead, the plaintiff has simply reargued the issues upon which he was not successful before this Court. The proper forum for such additional argument is in the Court of Appeals.

For these reasons, plaintiff's Motions for Reconsideration are DENIED.

IN THE UNITED STATES DISTRICT COURT
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EDWARD SMITH,

Plaintiff(s)

vs.

ANTHONY BRIGANO, Warden

Defendant(s)

Case Number: 1:01cv814-SJD

District Judge Susan J. Dlott

JUDGMENT IN A CIVIL CASE

Decision by Court: This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

. . . that the plaintiff's motions for reconsideration are DENIED.

9/24/04

JAMES BONINI, CLERK

s/Stephen Snyder
Deputy Clerk

Pursuant to S. D. Ohio Civ. R. 79.2(a) and (b), all models, diagrams, depositions, photographs, x-rays and other exhibits and materials filed or offered in evidence shall be withdrawn by counsel without further Order within six (6) months after final termination of the action. All materials not withdrawn shall be disposed of by the Clerk as waste.

IT IS SO ORDERED.

s/Susan J. Dlott
Susan J. Dlott
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

EDWARD SMITH,

Petitioner

vs.

ANTHONY BRIGANO, Warden

Respondent

Case Number: 1:01cv814-SJD

District Judge Susan J. Dlott

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge David S. Perelman. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on April 27, 2004 Report and Recommendations (Doc. 20). Subsequently, the petitioner filed objections to such Report and Recommendations.

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendations should be adopted.

IT IS ORDERED THAT petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. Sec 2254 is hereby DENIED with prejudice. The petitioner's motion for a writ of mandate and writ of mandamus for reopening direct appeal (Doc. 11) is hereby DENIED as moot.

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this order would not be taken in "good faith" and therefore DENIES petitioner leave to appeal *in forma pauperis*. See Fed. R.

IN THE UNITED STATES DISTRICT COURT
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EDWARD SMITH,

Plaintiff(s)

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Defendant(s)

Case Number: 1:01cv814-SJD

District Judge Susan J. Dlott

JUDGMENT IN A CIVIL CASE

Decision by Court: This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

... that petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. Sec 2254 is hereby DENIED with prejudice. The petitioner's motion for a writ of mandate and writ of mandamus for reopening direct appeal (Doc. 11) is hereby DENIED as moot.

... that with respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this order would not be taken in "good faith" and therefore DENIES petitioner leave to appeal *in forma pauperis*. See Fed. R. App. P. 24(a); *Kincade v Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

... that a certificate of appealability shall not issue with respect to the dismissal on procedural default grounds of the claims asserted in the petition as grounds five, seven, eight and nine because jurists of reason would not find it debatable whether this Court is correct in its procedural ruling as required under the first prong of the two-part standard enunciated in *Slack v McDaniel*, 529 U.S. 473, 484-85 (2000), which is applicable to procedurally-barred claims. A certificate of appealability shall not issue with respect to petitioner's remaining grounds for relief because petitioner has failed to make a substantial showing of the denial of a constitutional right remediable in this federal habeas corpus proceeding. See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). Petitioner has not shown that reasonable jurists could debate whether these claims should have been resolved in a different manner or that the issues presented were "adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 323-24 (2003)(quoting *Slack v McDaniel* 529 U.S. 473, 483-84 (2000))(in turn quoting *Barefoot v Estelle*, 463 U.S. 880, 893 n. 4(1983)).

9/2/04

JAMES BONINI, CLERK

s/Stephen Snyder
Deputy Clerk